IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9775 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSINBANU W/O ABDUL SHEIKH (MALEK)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 11.06.2003

passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 11.6.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration the offences came to be registered against the petitioner, four in number, on 1.6.2002, on 25.7.2002, on 5.8.2002 and on 21.2.2003 under Sections 66(b) and 65(e) of the Bombay Prohibition Act, whereby some quantity of country liquor was found from the possession of the petitioner. The detaining authority further relied upon two in-camera statements as recorded by sponsoring authority on 05.6.2003 and on 6.6.2003 and verified by the detaining authority on 09.6.2003, revealing the unreported incidents occurred on 20.5.2003 and 28.5.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr. MR Prajapati for Mr.HR Prajapati for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, it appears that the matter can be considered and be decided on the sole ground whether the further detention of the petitioner becomes bad in law on account of delay in passing detention order by the detaining authority. Chronology of events and material relied upon by the detaining authority clearly indicate that the last offence came to be registered against the petitioner on 21.2.2003. The order came to be passed on 11.6.2003, causing delay of about three and half months in between though the sponsoring authority, as aforesaid, has recorded the statements of witnesses on 5th and 6th of June, 2003, revealing the incidents of 20.5.2003 and 28.5.2003. In affidavit-in-reply, the detaining authority vide para 16 of the affidavit has clarified that the detenu was released on bail on 22.2.2003 but he was indulging in the antisocial activities after her release on bail and therefore the sponsoring authority

collected necessary information and recorded the statements of witnesses on 5.6.2003 and 6.6.2003 The proposal was forwarded to the detaining authority on 7.6.2003. The correctness and genuineness of the statements were verified by the detaining authority on 9.6.2003 and thereafter the order impugned came to be passed and according to the detaining authority, there is no delay.

Having considered the above said contention, it clearly appears that there is delay in passing the order of detention. It comes out from the record that though according to the authorities, the petitioner was indulging in illegal activities right after she was released on bail 20.2.2003 but the sponsoring authority could collect the material only on 5th of June, 2003 i.e. after almost three and half months, and that too, in the shape of two in-camera statements revealing the incidents of 20.5.2003 and 28.05.2003. This appears to have been done to cover up to give life to the stale case which was registered lastly against the petitioner on 21.2.2002. The facts of the case are covered by a decision of this court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. In para 21, this Court observed as under :

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli.

SCC 61."

5. Having regard to the facts of the case also, it clearly appears that the proximity or the live link between the alleged objectionable activity of the petitioner and the passing of the detention order is snapped by delay of about 3 and half months in passing the order, rendering the further detention of the petitioner bad in law. Therefore, the order impugned is required to be quashed set aside on this ground alone.

6. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 11.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair